

DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS
825 North Capitol Street N.E., Suite 4150
Washington, DC 20002-4210

DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Petitioner,

v.

TIMOTHY MURRAY
Respondent

Case No.: DH-A-06-800003

FINAL ORDER

I. Introduction

On July 17, 2006, the Government filed a request for a hearing pursuant to D.C. Code, 2001 Ed. § 8-1902(a) to determine whether four dogs – Asia, Remy, Redds, and Blu – owned by Respondent Timothy Murray are “dangerous dogs” as defined in D.C. Code, 2001 Ed. § 8-1901(1)(A).

No dog may be declared to be dangerous without a hearing pursuant to D.C. Code, 2001 Ed. § 8-1902. Accordingly, a status conference in this matter was held on July 25, 2006, and an evidentiary hearing was held on July 31, 2006. At the July 31st hearing, Thomas Collier, Esq., appeared on behalf of the Government, and put forth the following witnesses: Tiffany Edmonds, co-owner of Jo-Jo, the dog attacked by Respondent’s dogs; Bernard Davis, co-owner of Jo-Jo; Lauren Derise, Department of Health, Animal Control Officer; Laura Oliver, Humane Society, Field Services Manager; Theodore Deppner, Department of Health, Animal Control Officer; and, Cecilia Keller,

Chief, Department of Health, Bureau of Community Hygiene. Mr. Murray appeared and testified on his own behalf, and put forth the following witness: Kimberly Young, witness to the latest dog fight. During the course of the hearing, the Government's exhibits 100-112 and Respondent's exhibits 200-213 were admitted into evidence.

Based upon the testimony of the witnesses at the hearing, my evaluation of their credibility, and the exhibits admitted into evidence, I make the following findings of fact and conclusions of law.

II. Findings of Fact

1. Respondent, Timothy Murray, resides at 604 Harvard Street, N.W. Mr. Murray owns at least four pit bulls: Remy, a 16 year old female dog; Asia, a female dog; Redds, a male dog; and Blu, a male dog. Asia and Redds are a pit bull-mastiff mix. Exhibit 203. Mr. Murray bred them to be somewhat stronger and more intelligent than an average pit bull. Exhibit 203.

2. Redds is the "alpha male" of this cadre of dogs. He plays a leadership role vis-à-vis the other dogs. Remy is Asia's mother and Asia is Redds' mother. Exhibit 204. Blu was adopted from a farm in Virginia approximately three months ago. Remy is the least aggressive of the dogs and there is no evidence that she has bitten or attacked a person or another dog.

3. Mr. Murray has trained these dogs very well. They follow his commands, and, when in his presence, are docile and treat people appropriately. These dogs are not aggressive toward people even in Mr. Murray's absence. However, in Mr. Murray's

absence the dogs are very aggressive towards other animals, particularly other dogs. The dogs are also particularly protective of Kimberly Young's son Darius. If the Asia, Redds or Blu perceive a slight risk to Darius they will attack to "defend" him.

4. When the dogs are together and unsupervised by Mr. Murray they adopt a "pack mentality" and are more aggressive than when they are alone. When agitated, Asia, Redds and Blu's aggression is heightened and they are prone to attack relentlessly.

April 14, 2006, Incident

5. On April 14, 2006, Bernard Davis was walking Jo-Jo, a pit bull-chow mix. Jo-Jo was not on his leash. Jo-Jo spotted a loose cat and started to chase the cat. This activity incited all of Mr. Murray's dogs (at the time he had more dogs than he does now), who busted through the gate on their yard and went in hot pursuit after Jo-Jo. Mr. Davis tried to stop Mr. Murray's dogs from injuring Jo-Jo; however, during the fight, Jo-Jo was bitten, although the record is insufficient for me to determine which of Mr. Murray's dogs bit Jo-Jo. Mr. Davis was bitten on the arm by Redds. During this fight, Mr. Davis repeatedly hit one or more of Mr. Murray's dogs with a chain in the hopes of breaking up the fight. It did not appear to make a discernable difference in the dogs' demeanor. The dogs kept attacking for a period of time.

May 1, 2006, Incident

6. On May 1, 2006, Jo-Jo had gotten out of Mr. Davis' yard and was in the alley behind the house. Mr. Davis' yard is on the same side of the alley as Mr. Murray's yard. Mr. Davis and Ms. Edmonds each heard Jo-Jo and other dogs barking, so they individually ran to the back of the house to see what was happening. Jo-Jo was still

outside the gate and bleeding badly. As they went to the backyard to get Jo-Jo, Asia, Redds and Blu resumed attacking Jo-Jo. Jo-Jo was severely injured during the attack. Jo-Jo had puncture marks over 90% his body and was bleeding profusely. Exhibit 107. Jo-Jo was rushed to Friendship Heights Animal Hospital. Between the blood loss and the severity of the attack, Jo-Jo went into shock during the ride to Friendship Animal Hospital. Jo-Jo stayed at the animal hospital for approximately two weeks. In addition to Jo-Jo, another neighbor's dog (Co-Co) was bitten during this fight. Exhibit 108.

7. As a result of this incident, the Government and Mr. Murray entered into an Agreement, whereby Mr. Murray agreed that, *inter alia*, if: 1) any of his dogs got off of his property without a capable adult controlling them with a leash; or 2) any of his dogs became involved in another biting incident; or 3) he failed to comply with the other terms of the Agreement then the dogs could be “immediately impounded,” and “at the time of impoundment, Asia, Remy, Red[d]s, and Blu[] shall become the property of the District of Columbia.” Exhibit 106.

June 21, 2006, Incident

8. On June 21, 2006, Jo-Jo was again attacked by Asia, Redds and Blu. Kimberly Young was in the alley and walked past Jo-Jo. Kimberly Young was with her nieces (Amani Young and India Young) and her son Darius Young, who was three years old at the time. Darius straggled behind his mother and stopped to interact with Jo-Jo. Jo-Jo became agitated. Ms. Tiffany Edmonds heard Jo-Jo barking and called to Darius to leave the dog alone. Ms. Edmonds was concerned that Jo-Jo may bite Darius.

9. Jo-Jo's aggressive behavior toward Darius enflamed Mr. Murray's dogs, who were in the yard without supervision. Kimberly Young had taken the lock and chain off Mr. Murray's gate to let his puppy Shooter (not a subject of this proceeding) out of the yard, when she realized that Darius had lagged behind and was too close to Jo-Jo. With her attention diverted, Asia, Redds and Blu were able to force their way past Kimberly Young. The dogs raced toward Jo-Jo, who was still behind his fence. Hearing his mother call and having been asked to leave by Ms. Edmonds, Darius had started to walk toward Kimberly Young. Kimberly Young started to run in Darius' direction, as she was fearful that Darius could be harmed by Jo-Jo, as well as by the fight she anticipated the dogs would get into.

10. Darius got away from the rushing dogs. However, Jo-Jo had pushed hard against the gate and was able to force his head through the gate. With his head exposed, Mr. Murray's dogs attacked Jo-Jo with vigor. When she got to Mr. Davis' yard, Kimberly Young tried to break up the fight. In the process she was bitten by Jo-Jo. Exhibit 201. Ms. Edmonds saw the fighting dogs, but fearing for her safety and that of her baby, she did not intervene. Jo-Jo was taken to an animal hospital and required stitches from the bite wounds he received. Exhibit 100. Ms. Young's wound became infected and she required antibiotics. Exhibit 201.

III. Discussion and Conclusions of Law

A. Do Remy, Asia, Redds and Blu Each Satisfy the Definition of a Dangerous Dog Pursuant to D.C. Code, 2001 Ed. § 8-1902(1)(A)?

There are two elements to the definition of a "dangerous dog" under applicable law. The statutory definition provides that a "dangerous dog" is a dog that: (1) "[h]as

bitten or attacked a person or domestic animal [2] without provocation.” D.C. Code, 2001 Ed. § 8-1901(1)(A)(i). As set forth above, it is clear that Asia, Redds and Blu have attacked and bitten Jo-Jo three times, and Redds has bitten Mr. Davis once. While it is unclear exactly which of Mr. Murray’s dogs may have bitten Jo-Jo, what is evident from the record before me is that these dogs have, at a minimum, “attacked” Jo-Jo. It is also undisputed that Mr. Davis was bitten by Redds. Therefore, I conclude that the incidents set forth above satisfy the first element of the definition for Asia, Redds and Blu.

As it relates to the second element, the actions of the victim of an attack determine whether the attack was provoked. *DOH v. Long*, OAH No. A-01-80056 at 10 (Final Order, July 9, 2001). This administrative court has also had occasion to interpret the term “without provocation” where the victim of an attack is a domestic animal:

When the victim of an attack is a domestic animal, the most reasonable construction of “provocation” is that the dog perceives an imminent danger of harm to itself or to a human being from the other animal. Such a standard provides the necessary protection to members of the public and their pets, while respecting the statutory judgment that there are circumstances in which a dog may defend itself or a person. Because there is no way to know what a dog actually perceives, the test necessarily must be an objective one – *i.e.*, is it reasonable to expect that a dog would comprehend a threat, based upon the circumstances of which the dog is aware at the time of attack?

DOH v. Dyson, OAH No. A-04-80185, at 5 (Final Order, February 3, 2004).

In other words, provocation occurs when someone takes action to incite or anger another, including an animal. Regarding the April 14, 2006, incident, there is no evidence that Mr. Davis or Jo-Jo provoked the attack by Asia, Redds and Blu, or provoked Redds into biting Mr. Davis. I accept that because Jo-Jo was off his leash and chasing after a cat, Mr. Murray’s dogs became excited; however, Asia, Redds and Blu

were in their yard at this time which Jo-Jo never entered. Further, the cat was not Mr. Murray's pet. I do not conclude that this excitement rises to the level of provocation. There was no justification for Asia, Redds or Blu to attack Jo-Jo, or bite Jo-Jo and Mr. Davis.

I also conclude that the May 1, 2006, incident occurred without provocation. The only eye witness testimony regarding this attack came from Mr. Davis and Ms. Edmonds. They testified credibly that Jo-Jo was outside his yard in the back alley directly behind their house. There is no evidence to suggest that Jo-Jo engaged in behavior that would have provoked Asia, Redds, or Blu into attacking and biting him.

Regarding the June 21, 2006, attack on Jo-Jo, Ms. Young's assertion that Asia, Redds, or Blu were provoked is not credible. It is difficult to determine what a dog would perceive as provocation, therefore, the test must be an objective one; *i.e.*, is it reasonable that a dog would comprehend a threat, based on the circumstances of which the dog is aware at the time of the attack? *See DOH v. Shanks*, OAH No. A-05-800001. It is doubtful that Asia, Redds or Blu were able to see Darius interact with Jo-Jo, prior to getting out of Mr. Murray's yard (the yards are on the same side of the alley). So, the dogs either busted past Ms. Young to get out of the yard simply because the opportunity existed, or simply because Jo-Jo was barking. Either way, I conclude that neither possibility constitutes provocation. *See DOH v. Dyson*, OAH No. A-04-80185 and *DOH v. Shanks*, A-05-800001.

I also cannot conclude that Mr. Murray's dogs were provoked because Jo-Jo had bitten Ms. Young. After escaping from Mr. Murray's yard, Asia, Redds, and Blu had to

have gotten from their yard to Jo-Jo faster than Ms. Young (on the presumption they run faster than her). Clearly, the dog's attack against Jo-Jo started before Ms. Young got to Mr. Davis' yard. So, Asia, Redds, and Blu could not have been provoked by Jo-Jo's having bitten Ms. Young.

Further, Ms. Young asserted that she, India and Amani were walking Asia and Blu on leashes past Mr. Davis' yard (as compared to the dogs were locked up in Mr. Murray's yard prior to the attack), and Jo-Jo started barking at Darius when he lagged behind the others. Ms. Young said that she went back for Darius and took Asia with her. According to Ms. Young the fight started only after Asia found Jo-Jo with his head out of the gate barking vigorously at Darius. Ms. Young also claimed that no other dogs were involved in the fight. If this testimony were accepted as true, the fact that Jo-Jo was barking at Darius does not constitute provocation.

Moreover, I am disinclined to accept Ms. Young's assertions that she was walking Asia and Blu, because Laura Oliver, Field Services Manager testified that on the evening of the attack, Ms. Young said that Mr. Murray's dogs got out of the yard when she turned to look for Darius, as she was opening the gate to get Shooter. Lauren Derise, Animal Control Officer, testified that she overheard Ms. Young say this to Ms. Oliver, as did Ms. Edmonds. Further, at the outset of the hearing, as Ms. Young was trying to coax Darius into testifying, she asked do "you want to tell him about Asia, you want to tell him about your puppy" (emphasis added). While this statement was not made under oath and is not evidence per se, I conclude that it is indicia of what really happened; namely, Ms. Young and the kids went to Mr. Murray's rear yard to get the puppy Shooter, and upon hearing Jo-Jo bark, Mr. Murray's other dogs forced their way past Ms. Young and attacked Jo-Jo.

It is not reasonable to believe that these unaggressive gestures would anger or incite Mr. Murray's dogs and result in such a serious attack. It is the duty of dog owners to supervise and control their dogs. In all three incidents, if the dogs were being properly supervised, these could have been prevented or the injuries minimized. The evidence presented leads to a finding that the attacks were unprovoked.

The Government has proved, by a preponderance of the evidence that both elements of the statutory definition are satisfied and, therefore, Asia, Redds, and Blu must be declared dangerous dogs. There has been no specific testimony or other evidence to link Remy to these attacks. Hence the Government has failed to establish on this record that Remy is a dangerous dog.

B. Do Asia, Redds, and Blu Constitute a Significant Threat to the Public Health and Safety if Returned to their Owner?

If dogs are found to be dangerous dogs, the statute authorizes a further inquiry into whether the dogs "constitute a significant threat to the public health and safety if returned to [their] owner" D.C. Code, 2001 Ed. § 8-1903.¹ If so, the dog may be humanely destroyed.

The significant threat inquiry involves a two-step process, as described below:

There are two elements to the "significant threat" determination. First, the statute imposes certain mandatory requirements upon the

¹ D.C. Code, 2001 Ed. § 8-1903 provides:

If a determination is made that a dog is a dangerous dog under § 8-1902, the owner shall comply with the provisions of §§ 8-1904 and 8-1905 and any other special security or care requirements established by the Mayor, and in accordance with a time schedule established by the Mayor. A dangerous dog determined to constitute a significant threat to the public health and safety if returned to its owner may be humanely destroyed.

owner of the dog. An owner's failure to satisfy those requirements demonstrates that the dog is a "significant threat," because those requirements represent minimum standards necessary to safeguard the public from a dog with a proven history of at least one unprovoked attack. Alternatively, it is possible that the Government might prove that there would be a significant threat even if all the statutory requirements were satisfied.

DOH v. Evans, OAH No. A-01-80043 (Final Order, February 9, 2001) at 12-13, *aff'd sub nom. Evans v. District of Columbia Dep't of Health*, No. 01ca1347 (D.C. Superior Court, April 26, 2001) (citations omitted). *See also DOH v. Long*, OAH No. A-01-80056 (Final Order July 9, 2001) at 14. In order to satisfy the significant threat requirements, Mr. Murray would have to provide evidence that: (1) he is 18 years of age or older; (2) a valid license has been issued for the dangerous dogs pursuant to District law; (3) the dangerous dogs have current vaccinations; (4) he has the written permission of the property owner where the dangerous dogs will be kept; (5) he has a proper enclosure to confine the dangerous dogs; (6) he has posted on the premises a clearly visible written warning sign that there are dangerous dogs on the property with a conspicuous warning symbol that informs children of the presence of dangerous dogs; (7) he has secured a policy of liability insurance issued by an insurer qualified under District law in the amount of at least \$50,000 insuring the owner for any personal injuries inflicted by the dangerous dogs and containing a provision requiring the District to be named as an additional insured for the sole purpose of requiring the insurance company to notify the District of any cancellation, termination, or expiration of the liability insurance policy; (8) the dangerous dogs have been presented to the appropriate agency to be photographed for identification purposes; and (9) he has paid an annual fee

in an amount to be determined by the Mayor, in addition to regular dog licensing fees, to register the dangerous dogs. D.C. Code, 2001 Ed. § 8-1904.

The requirements of sections 8-1904 and 8-1905 are not triggered until a dog is first determined to be dangerous. This decision renders that determination. In the July 31st evidentiary hearing, the Government presented evidence regarding the "significant threat" elements for Asia, Redds, and Blu. Mr. Murray argued that none of his dogs are aggressive toward people, so they can be kept safely in the community. Putting aside the fact that Redds bit Mr. Davis, it is undisputed that these dogs are dangerously aggressive towards other dogs, and this alone is sufficient to trigger the statute.

The Government took the position that Asia was so aggressive that she could not be kept safely at Mr. Murray's house and should be put to sleep. Mr. Murray argued that Asia is not aggressive, but protective. Ms. Young testified that "Asia don't play. She [Asia] thinks Darius is her child." Asia has demonstrated a complete lack of control when she is out of Mr. Murray's presence and in the presence of Jo-Jo, let alone another animal. I conclude that Asia is so "protective" of everything in her domain as to be dangerously aggressive. As such, the Government has proven that Asia is a significant threat even if Mr. Murray is able to demonstrate compliance with the statutory requirements set forth above.

The Government argued that Redds is also too aggressive to be kept safely at Mr. Murray's house. Mr. Murray maintained that Redds was the leader of his dogs and he was also protective; however, Mr. Murray argued, Redds was not aggressive. Redds has bitten Mr. Davis, and attacked Jo-Jo three times. The last attack occurred after Mr.

Murray made required changes to his fence and his management of the dogs. This unfortunate reality leads me to conclude that Redds is also too aggressive to be safely maintained in Mr. Murray's house. The Government has proven that Redds is a significant threat even if Mr. Murray were able to demonstrate compliance with the statutory requirements.

Finally, as it relates to Blu, the Government argued that Blu is very aggressive and so young as to render him very dangerous. Whereas, Mr. Murray maintained that as Blu was new to his household, has never bitten a person and is a loner by nature, he could be trained to be less aggressive than Asia and Redds. I agree with Mr. Murray's contention that it may be possible to maintain Blu safely in his home, if he meets the significant threat requirements contained in D.C. Code, 2001 Ed. §§ 8-1904 and 8-1905.

Additionally, on June 8, 2006, Mr. Murray entered into an Agreement with the District wherein he agreed that should the dogs be involved in another biting incident, "Asia, Remy, Red[ds] and Blu[] shall become the property of the District of Columbia." Exhibit 106. Once any one of the dogs bit Jo-Jo on June 21, 2006, Mr. Murray gave up his ownership rights to the dogs. Thus, even if Ms. Young's assertion that only Asia was involved in the fight is accepted as true, the involvement of Asia alone triggered the provision cited herein. Therefore, regardless of my determination regarding the threat to the community associated with returning the dogs to Mr. Murray, the Government would be allowed to keep the dogs pursuant to this agreement, the enforcement of which, however, would lie in another forum.

In conclusion, I believe that Mr. Murray is an excellent dog trainer. I accept that Mr. Murray does not seek to train his dogs to be aggressive and violent, but rather good guardians of his family and property. However, as Mr. Murray has a new puppy and may get even more dogs, I strongly urge him to be more careful in how he trains these dogs. The dogs must be less protective, less aggressive towards other dogs and more easily controlled. Otherwise, as we see in this case, it is the dogs that will bear the burden of their poor upbringing, not Mr. Murray.

IV. Order

Based on the foregoing findings of fact and conclusions of law, it is, this _____ day of August 2006:

ORDERED that the dogs Asia, Redds, and Blu, owned by Mr. Murray, are declared to be dangerous dogs, as defined in D.C. Code, 2001 Ed. § 8-1901(1)(A)(1); it is further

ORDERED that Asia and Redds constitute a significant threat to the public health and safety if returned to Mr. Murray; it is further

ORDERED that the Government is authorized to humanely destroy Asia and Redds; it is further

ORDERED that the portion of the order concerning Asia and Redds is hereby **STAYED** until August 14, 2006 (five business days to allow service by mail). Mr. Murray shall then have five days, until August 21, 2006, to seek review in the D.C. Court of Appeals and a further stay from that court. This administrative court's stay shall

expire automatically, without further order of this administrative court, on the day noted above, unless the D.C. Court of Appeals grants a further stay; it is further

ORDERED that Mr. Murray has until **September 5, 2006**, to provide this administrative court with tangible evidence that all requirements outlined above have been met, and therefore Blu will not constitute a significant threat to the public health and safety if returned to him; it is further

ORDERED that all evidence submitted by Mr. Murray shall be served on the Government; and it is further

ORDERED that the Government has until **September 19, 2005**, to respond to any submission by the Respondent; it is further

ORDERED any action to destroy Blu shall be **STAYED**, pending resolution of this matter; it is further

ORDERED that the Government shall immediately release Remy to Mr. Murray in accordance with District of Columbia law; it is further

August 8, 2006

_____/S/
Jesse P. Goode
Administrative Law Judge